Leo M. Frank's Fate Is Now in Hands of the Jury; Motion for Mistrial Is Denied by Judge L. S. Roan

JUDGE ROAN CHARGES JURY THAT THEY ARE SOLE JDUGES OF WITNESSES' CREDIBILITY

He Discusses "Reasonable Doubt," Declaring That Burden of Proof That Defendant Is Guilty Beyond "a Reasonable Doubt, but Not Beyond All Doubt" Rests Upon the State

GOOD CHARACTER IS MATERIAL, HE DECLARES, BUT DOES NOT SUFFICE IF GUILFT HAS BEEN PROVEN

Judge Roan Was About Twenty Minutes Reading His Charge to the Jury – The Jurors Leaned Forward and Listened Attentively as He Proceeded – Here Is the Charge in Fall, just as It Was Delivered

Immediately after overruling the motion for a new trial made by Attorney Arnold, Judge Roan began his charge to the jury. He concluded at 12:47.

The judge first charged the jury on the question of reasonable doubt. He said that the presumption of innocence was in the defendant's favor until overcome by a reasonable doubt, not beyond "any doubt," but beyond a reasonable doubt.

He then defined murder, expressed malice, and malice.

The judge charged the jury that they were the sole judges of the credibility of witnesses. He outlined the legal meaning of “direct evidence” and “circumstantial evidence.” He declared that evidence of good character on the part of the defendant was relevant and material, but that if good character were proven it would not suffice if guilt were shown.

He then defined for the benefit of the jury the meaning of the word “character.” The fact, said the judge, that the solicitor asked witnesses if they had heard of misconduct was not to be taken as evidence of such misconduct if they failed to answer.

He said it was for the jury finally to say, judging the credibility of witnesses, as to the good character or bad of the defendant. “If you believe,” he concluded, “beyond a reasonable doubt, the defendant to be guilty, you should return a verdict. “We, the jury, find the defendant to be guilty, you should return a verdict, ‘We, the jury, find the defendant guilty of murder.’ If not you should bring in a verdict, ‘We, the jury, find the defendant not guilty.’”

The judge concluded that the jury could in its wisdom find the defendant guilty with a recommendation for mercy, which would mean imprisonment for life.

After thanking and admonishing the jury, the judge concluded his charge at 12:47.

STATE OF GEORGIA -------- Murder

VS. ----→ Fulton Superior Court

LEO M. FRANK -------- Trial: July 28 to Aug. 21, 1912.

CHARGE OF THE COURT

Gentlemen of the Jury:

This bill of indictment charges Leo M. Frank with the offense of murder. The charge is that Leo M. Frank, in this county, on the 26th day of April of this year, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck.

To this charge made by the bill of indictment found by the grand jury of this county recently empaneled Leo M. Frank, the defendant, files a plea of not guilty. The charge as made by the bill of indictment on the one hand and his plea of not guilty filed thereto form the issue, and you, gentlemen of the jury, have been selected, chosen and sworn to try the truth this issue.

PRESUMPTION OF INNOCENCE.

Leo M. Frank, the defendant, commences the trial of this issue with the presumption of innocence in his favor, and this presumption of innocence remains with him to shield him and protect him until the state shall overcome it and remove it by evidence offered to you, in your hearing and presence, sufficient in its strength and character to satisfy your minds beyond a reasonable doubt of his guilt of each and every material allegation made by the bill of indictment.

I charge you, gentlemen, that all of the allegations of this indictment are material and it is necessary for the

state to satisfy you of their truth by evidence that convinces your minds beyond a reasonable doubt of his guilt before you would be authorized to find a verdict of guilty.

NOT BEYOND “ANY” DOUBT.

You are not compelled to find, from the evidence, his guilt beyond any doubt, but beyond a reasonable doubt, such a doubt as grows out of the evidence in the case, or for the want of evidence, such a doubt as a reasonable and impartial man would entertain about matters of the highest importance to himself after all reasonable efforts to ascertain the truth. This does not mean a fanciful doubt, one conjured up by the jury, but a reasonable doubt.

Gentlemen, this defendant is charged with murder. Murder is defined to be the unlawful killing of a human being, in the peace of the state, by a person of sound memory and discretion, with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Malice shall be implied where no considerable provocation appears, and where all of the circumstances of the killing show an abandoned and malignant heart.

ARE EVIL DESIGN, AS MALICE

There is no difference between express and implied malice except in the mode of arriving at the face of its existence. The legal sense of the term “malice” is not confined to particular animosity to the deceased, but

extends to an evil design in general. The popular idea of malice in its sense of revenge, hatred, ill will, has nothing to do with the subject. It is an intent to kill a human being in a case where the law would neither justify nor in any degree excuse the intention if the killing should take place as intended. It is a deliberate intent unlawfully to take human life, whether it springs from hatred, ill will or revenge, ambition, avarice or other like passion. A man may form the intent to kill, do the killing instantly, and regret the deed as soon as done. Malice must exist at the time of the killing. It need not have existed any length of time previously.

When a homicide is proven, if it is proven to be the act of the defendant, the law presumes malice, and unless the evidence should relieve the slayer he may be found guilty of murder. The presumption of innocence is removed by proof of the killing by the defendant. When the killing is shown to be the act of the defendant, it is then on the defendant to justify or mitigate the homicide. The proof to do that may come from either side, either from the evidence offered by the state to make out its case, or from the evidence offered by the defendant or the defendant's statement.

SOLE JUDGE OF CREDIBILITY.

Gentlemen, of the jury, you are made by law the mole judges of the weight of the testimony of each and every witness. It is for you to take this testimony as you have heard it, in connection with the defendant's statement, and arrive at what you believe to be the truth.

Gentlemen, the object of all legal investigation is the discovery of truth. That is the reason of you being selected, empaneled and sworn in this case—to discover what is the truth on this issue formed on this bill of indictment. Is Leo M. Frank guilty? Are you satisfied of that beyond a reasonable doubt from the evidence in this case? Or is his plea of not guilty the truth?

The rules of evidence are framed with a view to this prominent end—seeking always for pure sources and the highest evidence.

Direct evidence is that which immediately points to the question of issue. Indirect or circumstantial evidence is that which only tends to establish the issue by proof of

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Judge Tells Jury They Are the Judges

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Various facts sustaining, by their consistency, the hypothesis claimed. To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must exclude every other reasonable doubt hypothesis save that of the guilt of the accused.

AS TO GOOD CHARACTER.

The defendant has introduced testimony as to his good character. On this subject, I charge you that evidence of good character when offered by the defendant in a criminal case is always relevant and material, and should be

considered by the jury, along with all the other evidence introduced, as one of the facts of the case.

It should be considered by the jury, not merely where the balance of the testimony in the case makes it doubtful whether the defendant is guilty or not, but also where such evidence of good character may of itself generate a doubt as to the defendant's guilt. Good character is a substantial fact, like any other fact tending to establish the defendant's innocence, and ought to be so regarded by the jury. Like all other facts proved in the case, it should be weighed and estimated by the jury, for it may render that doubtful which otherwise would be clear.

GOOD CHARACTER AND GUILT.

However, if the guilt of the accused is plain proved to the satisfaction of the jury beyond a reasonable doubt, notwithstanding the proof of good character, it is their duty to convict. But the jury may consider the good character of the defendant, whether the rest of the testimony leaves the question of his guilt doubtful or not, and if a consideration of the proof of his good character, considered along with the evidence, creates a reasonable doubt in the minds of the jury as to the defendant's guilt, then it would be the duty of the jury to give the defendant the benefit of the doubt thus raised by his good character, and to acquit him.

DEFINES "CHARACTER."

The "character" as used in this connection, means that general reputation which he bore among the people who knew him prior to the time of the death of Mary Phagan. Therefore, when the witnesses by which a defendant seeks

to prove his good character are put upon the stand, and testify that his character is good, the effect of the testimony is to say that the people who knew him spoke well of him, and that his general reputation was otherwise good. When a defendant has put his character in issue, the state is allowed to attack it by proving that his general reputation is not good, or by showing that the witnesses who have stated that his character is good, have untruly reported it.

Hence, the solicitor general has been allowed to cross-examine the witnesses for the defense who were introduced to testify to his good character. In the cross-examination of these witnesses, he was allowed to ask them if they had not heard of various acts of misconduct on the defendant's part. The solicitor general had the right to ask any question along this line he pleased, in order thoroughly to sift the witnesses, and to see if anything derogatory to the defendant's reputation could be proved by them.

NOT TO BELIEVE UNSPOKEN WORDS.

The court now wishes to say to you that, although the solicitor general was allowed to ask the defendant's character witnesses these questions as to their having heard of various acts of alleged misconduct on the defendant's part the jury is not to consider this as evidence that the defendant has been guilty of any such misconduct as may have been indicated in the questions of the solicitor general or any of them, unless the alleged witnesses testify to it. Furthermore, where a man's character is put to evidence, and in the course of the

investigation shown, this does not go before the jury for the purpose of showing affirmatively that his character is bad or that he is guilty of the offense with which he stands charged, but is to be considered by the jury only in determining the credibility and the degree of information possessed by those witnesses who have testified to his good character.

FOR THE JURY TO SAY.

When the defendant has put his character in issue, the state is allowed to bring witnesses to prove that his general character is bad, and thereby to disprove the testimony of those who have stated that it is good. The jury is allowed to take this testimony, and have the right to consider it along with all the other evidence introduced on the subject of the general character of the defendant, and it is for the jury finally to determine from all the evidence whether his character was good or bad. But a defendant is not to be convicted of the crime with which he stands charged, even though, upon a consideration of all the evidence, as to his character the jury believes that his character is bad unless from all the other testimony in the case they believe that he is guilty beyond a reasonable doubt.

AGAIN SAYS FOR JURY TO SAY.

You will, therefore, observe that this is the rule you will be guided by in determining the effect to be given to the evidence on the subject of the defendant’s character. If, after considering all the evidence pr and con, on the subject of the defendant’s character, you believe that prior to the time of Mary Phagan’s death he bore a good

reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's character, you believe that prior to the time of Mary Phagan's death he bore a good reputation among those who knew him, that his general character was good, you will consider that as one of the facts in the case, and it may be sufficient to create a reasonable doubt of the defendant's guilt, if it so impress your minds and consciences, after considering it along with all the other considering it along with all the other evidence in the case; and if it does you should give the defendant the benefit of the doubt and acquit him. However, though you should believe his general character was good, still if, after giving the weight to it as one of the facts in the case, you believe from the evidence as a whole that he is guilty beyond a reasonable doubt, you would be authorized to convict him.

JURY CAN RECOMMEND LIFE SENTENCE.

If you believe beyond a reasonable doubt from the evidence in this case that this defendant is guilty of murder, then you would be authorized in that event to say, "We, the jury, find the defendant guilty." Should you go no further, gentlemen, and say nothing else in your verdict, the court would have to sentence the defendant to the extreme penalty for murder, to-wit: to be hanged by the neck until he is dead. But should you see fit to do so, in the event you arrive at the conclusion and belief beyond a reasonable doubt from the evidence that this defendant is

guilty, then, gentlemen, you would be authorized in that event, if you saw fit to do so, to say: ‘We, the jury, find the defendant guilty, and we recommend that he be imprisoned in the penitentiary for life.” In the event you should make such a verdict as that, then the court, under the law, would have to sentence the defendant to the penitentiary for life.

DO YOUR HONEST DUTY.

You have heard the defendant make his statement. He had the right to make it under the law. It is not made under oath and he is not subject to examination or cross-examination. It is with you as to how much of it you will believe, or how little of it. You may go to the extent, if you see fit, of believing it in preference to the sworn testimony in the case.

In the event, gentlemen, you have a reasonable doubt from the evidence, or the evidence and the statement together, or either, as to the defendant’s guilt as charged, then give the prisoner the benefit of that doubt and acquit him; and in the event you do acquit him the form of your verdict would be: “We, the jury, find the defendant not guilty.” As honest jurors do your utmost to reach the truth from the evidence and statement as you have heard it here, then let your verdict speak it.

JURY TAKES UP EVIDENCE

AFTER GOING TO LUNCH;

VERDICT IS NOW AWAITED

No Sooner Had Solicitor Dorsey Concluded His Record-

Breaking Speech of Nine Hours and Twenty Minutes Than Attorney Arnold Moved for a Mistrial on Grounds That Frank Had Not Had a Fair Trial

DEMONSTRATIONS OVER SOLICITOR HAVE TENDED "TO COERCE AND INTIMIDATE JURY," SAID ARNOLD

Five Instances of These Demonstrations Which, Mr. Arnold Asserted, Must Have Been Heard by Jury, Were Cited. Judge Immediately Overruled Motion-Dorsey's Final Summing-Up Speech–Mrs. Frank Almost Faints.

The case of the state versus Leo M. Frank went to the jury at 12:47 o'clock Monday afternoon. Court was then adjourned and the jury taken to lunch. After the jurymen finished eating they were escorted to a room on the fourth floor of the court house where they will deliberate until they reach a verdict or until they satisfy the court that it is impossible for them to agree.

Immediately after Solicitor Dorsey concluded his long argument—nine hours and twenty minutes—at noon Attorney Arnold, asked that the jury be taken from the court room whereupon he arose and made a formal motion for a mistrial.

Mr. Arnold based his motion upon six grounds, as follows:

First. That at the beginning of the trial the court has declined the request of the defense that the court room be cleared.

Second. That the audience applauded when the court refused to rule out evidence relating to women, and that the jury was in a room but twenty feet distant and could have heard the applause.

Third. That on Friday, August 22, when the jury was but 200 feet north of the court hours a large crowd, outside in the street, had cheered the solicitor, crying “Hurrah for Dorsey!”

Fourth. That on Saturday, August 23, when the jury was about 100 feet north of the court house, a large crowd again cheered the solicitor.

Fifth. That on Monday morning, August 25, a large crowd of women assembled in the court room before the trial began, and that when the solicitor entered he was loudly cheered; that the jury was in a room about twenty feet distant and could have head the cheers.

Sixth. That these demonstrations tended to coerce and intimidate the jurymen and influence their verdict.

After stating the grounds of the motion Mr. Arnold argued it. He declared that the behavior of the spectators throughout the trial had been disgraceful and shameful, and that the defendant had had anything but a fair trial.

SOLICITOR DORSEY DEMURS.

Solicitor Dorsey demurred to the motion, and Mr. Arnold called several of the bailiffs who had been in charge of the jury, swore them and asked them a number of questions. Some of these bailiffs admitted that they had heard cheering, but stated that they did not know what it

was about at the time. They denied that they had heard any shouts of “hurrah for Dorsey!”

Mr. Arnold himself took the stand and testified to having heard these cheers when the jury was within earshot.

Judge Roan overruled the motion announcing that he would charge the jury and after it retired the defense could, if it desired, call other witnesses to complete the showing.

A subdued titter went around the court room when the judge announced his decision and Attorney Arnold immediately called the court’s attention to the demonstration.

It required twenty minutes for Judge Roan to read his charge. The jury listened attentively.

Just as Solicitor Dorsey concluded his speech Mrs. Frank, wife of the defendant, manifested signs of faintness. Friends handed her a glass of water and fanned her. While Judge Roan was reading his charge, Mrs. Frank leaned her head against that of her husband, and the latter had his arm about his wife’s waist.

It was announced by Judge Roan that should the jury reach a verdict at a reasonable hour Monday he would come to the court room to receive it, otherwise if a verdict is reached it will be a sealed verdict and not announced until Tuesday.

At twenty minutes to 2 o’clock the jury returned from lunch and was escorted to the fourth floor of the court

house, where it began its deliberations with the purpose of making up a verdict.

WOMEN HAVE RIGHT OF WAY.

Hundreds of male spectators were disappointed Monday morning by being left outside the courtroom when the Frank trial was resumed for what promised clearly to be its last day.

All women who were waiting when the doors were opened were given right of way into court. Some 175 of them were seated before the officers began to admit the men. And not more than 50 of these latter could get in, as a consequence. The waiting line remained, however.

The street in front of the courthouse was crowded when Solicitor Dorsey crossed it from his office in the Kiser building to enter court. He was cheered enthusiastically by the outside crowd.

Judge Roan opened court by admonishing the spectators against disorder. There were many among the spectators, no doubt, he said, who did not appreciate the proper decorum to be observed in a courtroom; and these he wished to warn specifically against demonstrations of any kind. Violators of the warning, said he, would be evicted summarily from the court.

“Be careful of your demeanor,” said he. “Your conduct here, if improper, might invalidate all of this work that has been done in the past four weeks."

DORSEY RESUMES.

Solicitor Dorsey resumed.

“Gentlemen of the jury, I am even more exhausted this morning than I was Saturday. My throat is in such shape that I fear I cannot do full injustice to the case.”

“When we closed, I was in the midst of a brief analysis of the statement of this defendant. I am not going into an exhaustive analysis of it, because it is not necessary to inconvenience you further, and I haven’t the physical strength.”

“But there are certain statements and assertions that merit an analysis.”

“This defendant stated to you that his wife visited him at the police station. He says she was brough there by her two brothers-in-law and Rabbi Marx.”

He read one of the sentences in Frank’s statement. “‘I considered letting her come up to the third floor, but decided it was better not to make her confront the line of reporters and snap shooters.’”

“Gentlemen, at the time he says his

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LEO. M. FRANK’S FATE IS NOW IN HANDS OF THE JURY.

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Wife was there, Rabbi Marx was with me.

“He doesn’t prove his assertion, but relies solely on his own statement.”

“If he can prove it, why didn’t he?”

“Can you tell me that there lives a true wife, connections of her husband’s innocence, that would have been deterred by a line of reporters?”

“UNFAIR,” SAYS ARNOLD.

Attorney Arnold interrupted. “Your honor, I can’t let this go on. It’s the most unfair argument I ever heard. It’s manifestly unfair to a man on trial for his life. It’s an outrage upon law and justice.”

There was some little discussion. Judge Roan said, “If it’s in his statement, Mr. Arnold, I’ll have to let Mr. Dorsey argue it.”

“Let the galled jade wince!” cried Mr. Dorsey. “They know it!”

Attorney Rosser spoke up. “It’s a dirty speech,” he exclaimed.

Judge Roan ruled, however, that if the assertions were in Frank’s statement. Mr. Dorsey could proceed.

“Frank said his wife didn’t go there because snapshooters would get her picture,” continued Mr. Dorsey, “I tell you there never lived a woman conscious of the rectitude and innocence of her husband that wouldn’t have gone to his side—that wouldn’t have gone through a line of reporters, a snapshooters, and against the advice of any rabbi.”

“Frank says in his statement, with reference to those notes written by Conley, that he told his friends in the jail that he knew Conley could write because he had written him too many notes asking to borrow money. He says he gave them directions to look in a drawer in the safe and

find the card of a jeweler from whom Conley had bought a watch."

"This corroborates Conley as to the watch incident; and as to Conley telling Mr. Frank not to take out any more of his money to pay the jeweler."

"Scott says that no such thing ever happened as Frank giving them directions which resulted in the discovery that Conley could write."

"If Frank knew so well that Conley would write, in the name of fairness, why, didn't he then and there, when they showed him the notes at police station, tell them that the writing was the writing of James Conley? Up to the time they discovered that Conley could write, only their discovery could force Conley to make an admission that he was connected with his crime."

"Frank says he knew that Conley could write."

NOTES KEY TO MYSTERY.

"Why, then, did he keep his mouth shut until the detectives discovered it, when he knew that these notes were the key that would unlock the mystery."

"Ah, you knew that Conley could write!" turning to the accused. "You knew it, because he had checked up the boxes at the pencil factory. You knew it, he had written you notes asking to borrow money. You knew that the most powerful fact that could be brought to light was the identity of the person who wrote those notes. And yet, when you saw the notes Sunday morning at the police station, you said not a word, although the notes

themselves said that the crime had been committed by a negro."

"Frank says, with reference to Conely's visit to the jail, that when Conley wanted to confront him he sent word to the detectives to get Mr. Rosser's permission. Mr. Rosser, on that day, was at Tallulah Falls, trying a case. But he got back from there, didn't he? He didn't remain up there. I tell you, gentlemen of the jury, and I measure my words when I say them—and if you've got sense enough to get out of a shower of rain, you know it's true—that never in the history of the Anglo-Saxon race, and never in the history of the African race in America, did an ignorant negro ever accuse a white man of a crime where the white man was innocent, and the white man refused to confront the negro."

"And I'll tell you another thing. There never live din Georgia a lawyer with one-half the ability of Mr. Rosser, with a consciousness of his client's innocence, who wouldn't have said: 'Let my innocent client confront this negro.'"

"I know that if a negro accuses me when I am innocent, I am going to confront him, whether my lawyer is in town or not. And if I do, perchance, wait until my lawyer returns. I am certainly going to confront him then."

"You make much of the fact that you didn't know what Jim Conley would say on the witness stand," said the solicitor, addressing the accused. "You could have known—if you had dared!"

ROSSER INTERRUPTS.

Mr. Rosser arose and objected, declaring that the solicitor's statement was untrue: that even the detectives that time did not know of the innuendoes in Conley's statement.

"Oh, you can get up as much as you want to!" said Mr. Dorsey, "but I will put it up to the jury."

Mr. Rosser objected again. "He has no right to go into my conduct or to comment on my objections. He must stay in the record."

"I am in the record!" said Mr. Dorsey. Mr. Rosser objected again. Judge Roan said: 'You can argue that Frank refused to see his accuser.' Mr. Rosser: "We didn't object to that." Mr. Dorsey: "Ah, they see the force, they see the force of it!"

Mr. Rosser objected again and Judge Roan ruled with him.

"Well, if they didn't see the force of it, then you do, gentlemen of the jury," said Mr. Dorsey. Judge Roan directed the solicitor to cease comments on the attorney's objections. Mr. Dorsey continued:

"This man Frank, with Anglo-Saxon blood in his veins, graduate of Cornell, superintendent of the National Pencil factory, so anxious to ferret out the crime that he phoned Schiff three times to get detectives, this man, Frank, refused to meet this ignorant negro on the flimsy pretext that his attorney was out of town, and then when he had an opportunity to know some of the accusations, he dared not let Frank meet this negro."

“But it is not necessary to take up time with this. Tell me that the weakest of you. If you were innocent, and a black-skinned man charged you with an infamous crime—that any lawyer, Rosser or anybody else, could keep you from confronting him and nailing the lie?”

“No lawyer could prevent me from confronting the man who accused me wrongfully, were he black or white.”

INTERVIEW WITH LEE.

Turning to the defendant: “And you went in and interviewed Newt 12 o’clock Tuesday night. What did you do? Did you act like a man who wanted to get the truth? No. Instead of talking up and trying to get the truth from the man to whom you had infamously directed suspicion to save your own neck, the neck whom you would have sent cheerfully to the gallows to save your reputation among the people of Washington street and the people of the B’nai B’rith—did you make an honest, conscientious effort as employer to employee? No. According to Lee, you hung your head and predicted that both of you would go to hell if he continued to tell the story which he tells to this good day.

In your statement you try to make us believe that your detective, Scott, and old John Black, concocted a scheme and lied to ruin you.

“The reason Frank didn’t put it up to Lee and try to get the truth was because he knew that Lee was innocent, and that he himself was the murderer. And he knew that by trying to direct suspicion toward Lee he was adding another crime to his assault upon Mary Phagan’s virtue and to his murder of her. He knew that he was making an

infamous effort to send this negro to the gallows to save his own reputation and his own neck.”

“OH, HE’S SMART!”

“Listen to this. Oh, he’s smart! Listen how he qualifies and fixes up this point in his statement so that on rebuttal the technical law prevented our impeaching it: ‘The detectives stressed the fact that couples had probably been let into the building by Night Watchman Newt Lee.’ By Night Watchman Newt Lee, who had been there only two weeks; not by night watchmen—for he knew what the detectives could prove.”

“During those weeks there wasn’t but one person for whom his passion burned; and that person was Mary Phagan. Speech didn’t meet him when Newt Lee was night watchman. If it were not true that couples were admitted to the basement, why didn’t he make the challenging statement to the police that at no time couples were admitted?”

“Another thing. Listen to this: ‘Those spots claim to be blood on the floor—now I don’t say they are not blood; they may be. They were right by the women’s dressing room. And, by the way, about those accidents; we don’t report all accidents there. There are accidents that we don’t have records of. And also, we use paint and varnish, a great deal of it. I’ve seen girls break bottles of varnish, a great deal of it. And had it been blood, that hascoline, which is a great solvent and which was over it, would have been pink or red.’”

“Contrast that with the reference he made to the floor around Barett’s machine. There, he says, there wasn’t a

spot, much less a spot that looked like blood. He said ‘there are spots all over the factory,’ and yet he said there were none there.”

“And you say that wasn’t blood,” made to the floor around Barret’s hascoline wouldn’t have remained that white. In the name of truth and goodness, then, why didn’t you bring chemists in to back up your statements?”

Facing the jury:

“Gentlemen, wouldn’t it have been the same color as witnesses here swore it was?”

“THOSE SPOTS WERE BLOOD.”

Facing the defendant again: “If it be true that you didn’t care what Dr. Harris said, why didn’t you devote a little of the time you took with your attempt to tear down his statement, to bring a reliable chemist into court to bear up your assertions? In the name of truth and fair play, why didn’t you sustain them? These gentlemen want the truth. There’s but one answer; and you know what it is. Those spots were blood, and the color of hascoline wouldn’t have changed, as you said it would, but would have remained just as the witnesses who testified here swore it was. There was no more important fact in the whole case for you, than to have brought in evidence to prove what you said. You couldn’t get a chemist to come in here and sustain you.”

Turning back to the jury: “Are you going to believe this statement, not backed up by any chemist on earth? Gentlemen, they couldn’t get a reliable chemist to come in here and say that that was not a blood stain.”

“They’ve got no defense. They never have come to close contact in this case, except on the question of abuse. They circle but never light. They dwell on varnish, and cat’s blood, and Duffy’s blood, but they won’t knuckle down and show that those stains were not blood. You know, gentlemen, that that was blood. You know it was the blood of the innocent victim of his lustful passion. You know it, by the testimony of Mel Stanford. Mrs. Jefferson and ‘Christopher Columbus’ Barrett—‘Christopher Columbus’ Barret, who was honest enough and brave enough to tell the truth even though he gets his living room the coffers of the National Pencil company.”

“FLUTTER BUT NEVER LIGHT.”

“And another proposition, gentlemen, over which they flutter but where they never light; they don’t say Conley put her body down a hole. They can’t name a hole. They don’t say Conley put her down through that hole in the Clark Woodenware company, which would have concealed her body a far longer time than the place where it was found. Boxes were stacked high around that. And people coming into the basement, and the fireman, wouldn’t have found it there.”

“Would this negro who they say robbed the girl, even if he had taken the trouble to write the notes of his own volition, have taken time to tie that cord around her neck—cord which, by their own admission, is seldom found in the basement but is plentiful on the office floor—if he had done all that, why would that negro have moved her body if it was more securely hidden where they say he attacked her?”

“Will you tell me why, if he put her down through that scuttle hole back there, he tied the cord around her neck and dragged her out to where she surely would be found? Will you tell me why old Holloway called the police, when Conley was washing his shirt; and why he said ‘That’s my nigger?’ And tell me why after detectives had searched around there for two weeks, blood was found around that scuttle hole—more blood than the poor girl ever was shown to have lost?”

“Listen to this: In his own statement, Frank says that Quinn came to him and said he would like to take him back to the metal room and show him spots that were supposed to be blood spots, and that the papers said had been found by Barrett; and show him, too, some hair—although he had seen all this in the papers that morning, and although he was so anxious to get the Pinkertons on the case that he phoned three times, and although he was torn up about it. Why did Quinn have to come and get him to go back there? Was that the conduct of the superintendent of a pencil factory, anxious to find the murderer of a girl employee?”

CITES FRANK’S CONDUCT.

“Was that the conduct of a man anxious to aid the detectives?”

“Yet he tells you in this statement, so early written, so glibly rattled off, that he made a minute examination of the blood spots with an electric flash light. Isn’t it strange that Lemmie Quinn doesn’t sustain you on that point? No one ever saw you examine what the host of witnesses said was blood. Why? Because such an examination never took place. If there was one spot on the earth that you didn’t

want to examine it was that blood there on the second floor, where by your own statement you were at work when this poor girl met her death."

"Frank says he visited the morgue twice, once in the morning and once in the afternoon. If it is true, as he says, that it tore him all to pieces when he saw the corpse that morning. I want you as honest men to tell me why he went there again in the afternoon. Boots Rogers testified that Frank did not look at the body that morning. Black said that he didn't see Frank look at it."

Attorneys Arnold and Rosser objected, contending that Rogers testified that he was not looking at Frank instead of testifying positively that Frank did not look at the body.

"NEVER LOOKED AT CORPSE."

"All right," said the solicitor, "I'm not going to quibble with you on that point. The truth is, and you know it, that he never looked at the body, and if he did neither Boots Rogers nor Black nor Gheesling saw him. If he did neither Boots Rogers nor Black nor Gheesling saw him. If he did, it was just a glance as the light flashed on, and then he turned and went into another room."

Attorneys for the defense objected again on the ground that there was no evidence to show that Frank went into another room. Solicitor Dorsey replied:

"I know this evidence and I know what I'm talking about."

Attorneys for the defense objected again on the ground that there was no evidence to show that Frank went into another room. Solicitor Dorsey replied:

“I know this evidence and I know what I’m talking about.”

“Attorney Arnold “But what’s the use in objecting, your honor. If he keeps right on?”

Solicitor Dorsey: “Let ’em look up the evidence, your honor. They’re got plenty f time and nothing else to do?”

Judge Roan: “But they insist, Mr. Dorsey, that you do not go ahead until the matter is settled by reference to the evidence.”

Solicitor Dorsey: “I insist, your honor, that they look up the evidence.”

JUDGE LOOKS INTO RECORD.

Judge Roan: “Give me the record, Mr. Arnold,” rather impatiently, “and I’ll look it up myself.”

Solicitor Dorsey continued.

“If he ever looked at the body, he looked at it briefly; and in that brief glance, if the arms were blackened with dirt and if the face was blackened and the mouth full of sawdust and the eyes black, and if he didn’t know Mary Phagan, how could he identify her so promptly and so positively?”

“The reason for his second visit, after he had failed to mention the tragedy to the family at dinner that Sunday, and after the sight of the corpse had torn him all to pieces, as he says himself, was that he wanted to put his ear to the ground and find out if there was any whisper or suggestion that Leo M. Frank was the man who perpetrated the dastardly crime. Rogers didn’t see him. And Gheesling

didn’t see him. Neither saw him take a good look at the body.”

“He admits himself that the sight of the corpse tore him all to pieces. He tries to make you believe that it was the automobile ride in the early morning air. Yet like a dog to its vomit, like a sow to her wallow, he went back down there to see the body of that innocent girl.”

“No, that wasn’t the reason. He went back there to see if he could detect a scent of anything which would indicate that the police had suspected him.”

ROSSER CITES RECORD.

At this point the record on Boots Rogers’ testimony was found. Reading from the cross-examination, Attorney Rosser showed where Rosser testified that, Frank passed out of his view.

The solicitor still insisted that on the direct examination, Rogers had testified that Frank went out of the room.

“He wanted to get out of the view of anyone who represented the majesty and the dignity of the law,” said the solicitor.

Attorney Rosser insisted that the solicitor was not confining himself strictly to the evidence.

“All right!” the solicitor finally exclaimed, impatiently. “I’ll let that pass. I’ll throw you that sop to satisfy you.”

Resuming, he addressed the jury.

“This thing kept preying on his mind when he went home that night, until his guilty conscience finally

prompted him to make a play of lightness. I suppose he must have done it just to satisfy himself that he could appear perfectly at ease; that he could repress any sign of nervousness. So he went in and read to them the funny story in the magazine. As he was not nervous then, and was not nervous at the table that night; he surely was nervous and won't deny it when he faced and had to discuss the proposition with the minions of the law on Sunday morning."

WHEN FRANK WAS NERVOUS.

"He was nervous when he started to turn on the power of the elevator down at the factory. He was nervous when he tried to start the elevator down to the basement. Unsupported by any oath, he tells you that a fireman had come around and instructed him not to lock the power box. I ask you what was the necessity of leaving the power box open when by a simple turn of the lever they could cut the current off, and thereby obviate all possibility of firemen being electrocuted?"

"No, gentlemen, the truth is just like Holloway swore it in that affidavit he made to me back there in May. That power box was kept locked all the time, and the key hung in Frank's office, just where Jim Conley says it hung."

"When Frank got there that Sunday morning, he had the key in his pocket."

ROSSER AGAIN OBJECTS.

Attorney Rosser objected. "There is not a line of evidence to that effect," he declared.

Solicitor Dorsey: “The point is that the box was unlocked, that Sunday morning.”

Attorney Rosser: “That isn’t the point he’s stressing, your honor. He’s trying to make it appear that Frank had the key in his pocket.”

Judge Roan: “As I understand it, Mr. Rosser, he is claiming that as a deduction.”

Solicitor Dorsey: “Let it pass.”

The solicitor read from Rogers’ testimony: “‘Mr. Gheesling stepped in and flashed on the light, and I turned to see if any body followed, and I saw Mr. Frank turn and go into what I thought then was a closet but found out afterwards that it was the room where Gheesling slept.’”

WOULD NOT MISLEAD JURY.

“I don’t want to misrepresent the evidence, for goodness knows there is enough without any such practice. I don’t want to mislead this jury, and I will not mislead it.”

He read from Frank’s statement: “‘After looking at the body I recognized the girl who had been to the factory the day before, and after I went to office and found the name of Mary Phagan on the pay roll. I knew there could be no doubt of her identity.’”

Turning to the accused: “And you might have added that when she did not yield to your demands you struck her; that she fell, and that then, to protect your character—no, I mean your reputation—you choked her, and you called Jim Conley to carry her body to the basement, and that because you had made out the payroll every week for

52 weeks you knew her name; and that because you had looked upon her with lust you knew her face. Yes, you might have added: ‘I didn’t see her, but for those reasons I knew it was Mary Phagan.’”

CORROBORATES DETECTIVES.

“In his statement Frank corroborates the detectives by telling how they entered the room. And he tries to make you think that at one little glance he saw the would behind her ear, the dirt on her face and in her hair and eyes, and he saw that her tongue protruded and was swollen, and that a cord was around her neck. The only way that you jurors can believe that he saw all of that is for you to believe that John Black and Boots Rogers perjured themselves to put a rope around this man’s neck.”

“Frank in his statement would have you believe also that Starnes is a perjurer, for he said: ‘He called me over the phone. I asked him what was the matter, a fire, and he said, “No, a tragedy.”’ Yet Starnes tells you that the word tragedy was never mentioned. And he asked Rogers and Black if there had been a tragedy. It was on his nerves. Yet Starnes, the man who went after Lee when Frank directed suspicion toward him, the man who went after Gantt when he directed suspicion toward him, the man who has been on the detective force for years and years, is a perjurer. If you believe Frank.”

“And why would he have you believe Starnes is a perjurer? That he would try to place a rope around Frank’s neck, when to sustain his reputation or his ambition he could just as easily have gone after Lee or after Conley or after Gantt?”

“Frank called Lee up at the factory—the first time he had done such a thing, Lee tells you. And in his statement, he says he asked if Gantt had gone. Yet Lee tells you that Gantt’s name was not mentioned. You tell me that all of these incriminating circumstances piling up, are nothing but prejudice and perjury?”

WHY HE CALLED LEE.

“Frank says, ‘I succeeded in getting Lee and found out that Gantt had gone.’ He had instructed Lee not to let Gant in; and Lee, true to his trust, stopped Gantt at the door. So Frank said, go up with him, and see that he gets what he wants.’ Yet, while he had never done it before, he innocently called Lee that evening. To find out about Gantt? No. To find if Lee had discovered the body.”

“Would you convict a man on this circumstance, and on that circumstance? No, but I would weave a rope, no one strand of which is strong enough, but with strands taken together forms such a rope, such a cable, that there is no doubt, no reasonable doubt, that this man murdered Mary Phagan."

"Frank stated to the police that he did not leave his office between certain hours."

"He didn’t know then that his own detective, Scott, had found little Monteen Stover. And on the day that Scott found her, May 1, he went to Frank at the jail. Frank in his statement now tries to get around it, saying, ‘I don’t think I left the office, but it is possible that I did go to answer a call of nature. One does those things unconsciously, you know.’ If he had answered such a call, would he have

repeated so positively and so many times that he did not leave the office?”

“On May 3, Scott, as honest and honorable a man as I know, who said he worked hand in glove with the city detectives, and who despite the fat that some of the others tried to run the hare and chase with the hounds, held to his argument. Scott went to him and said ‘Did you leave the office from the time Mary came in until you went to call Mrs. White?’ And Frank, who didn’t know the importance of it then, answered ‘No.’ And Scott came back at him this way: ‘Did you stay right in your office from the time came from Montag’s until Mary Phagan arrived?’ and he answered ‘Yes.’ And Scott said ‘Did you stay in your office every minute from 12 to 12:30?’ And Frank answered ‘Yes.’ Not until he saw the devotion of this man Scott to truth and right, did Frank shut him out from his counsel. But not knowing its importance, he had told his own detective, in the presence of John Black, that at no time between 12 and 12:30 did he leave his office.

POWER OF THE JURY.

“Are you going to let him set aside what he then told the detectives, with a weak statement ‘I might have answered a call of nature. One does those things unconsciously.’ You can if you want to. No king, no potentate in the whole world has the power vested in an American jury. In the secrecy of the jury room, you may write a verdict which outrages truth and justice; and no power but your own conscience ever can call you to account. But if you do, wherever you may go, you will carry

a burden. Others may respect you, not knowing the truth; but you will never have your own self esteem."

"The defense has made a mighty effort to break down the testimony of little George Epps, and to try to show that George Kendley, because he happens to believe that this man is guilty, is a liar. Bu tthere is one state's witness on that point against whom not a breath of suspicion has been raised. That witness is N. Kelly, who rode on the same car with Hollis—or rather with Matthews—and who tells you that Mary Phagan was not on there while the car went south on Broad to Hunter."

"Mr. Rosser says he doesn't care about medical evidence. I'm not going back on my raising when I tell you, gentlemen, that there is no more wholesome food than cabbage. If it's properly cooked it's easily digested—just as easy as any other meal you can eat, because most any other food takes just as long to digest. I tell you cabbage and cornbread and a glass of buttermilk is a fine meal for anybody. The assertion that they don't care about that evidence is not borne out by the records of the case. I'll venture to say, gentlemen, that these doctors, these general practitioners who didn't specialize on digestion, were brought in here because they were the family physicians of some of you jurors."

"AN INSULT TO JURY."

Attorney Arnold objected strenuously: "It's a grossly improper suggestion," said he, "and ought to be retracted and withdrawn. I want to ask your honor to reprimand him," pointing to Mr. Dorsey, "and remove the suggestion from the jury. It's even an insult to the jury."

Solicitor Dorsey: “I insist, your honor, that it is fair and legitimate argument.”

Judge Roan: “What was your point, Mr. Dorsey?”

After Solicitor Dorsey explained it to him. Judge Roan said that if it was in the record, the solicitor could proceed.

“Well, it’s not in the record,” declared Mr. Arnold.

Solicitor Dorsey: “Well, it is only natural to presume that they were brought in here because of that. They were not specialists.”

Judge Roan: “Go on, Mr. Dorsey.”

“I thought so,” said the solicitor.

Mr. Arnold jumped again to his feet. “Does your honor hold that that remark is proper?”

SOLICITOR ALLOWED TO PROCEED.

Without further comment, the solicitor resumed his argument.

“I can’t see any other reason on God’s earth except that, for bringing in men who haven’t had experience in digestion. The number of witnesses that the defense put up in their attempt to refute this testimony, belies the assertion that they didn’t care about it. It is one of the most important things in the case, gentlemen.”

“It fastens and fixes and nails down the time when Mary Phagan was foully murdered in that pencil factory, with the accuracy which nothing but a scientific fact could display. It proves where she was when Monteen Stover was in the factory. It proves where Frank was when Miss Stover found him out of his office. Do you tell me that Dr. Childs,

who didn’t know anything about the function of gastric juices in the stomach, with only seven years’ experience, and this gentleman from Michigan—can they put their statements against the assertion of Dr. Roy Harris on this point? I say no.”

DEFENDS DR. HARRIS

“Mr. Arnold says old Judge Samps Harris admitted him to that bar. I’m proud of the fact that he admitted me to it, too. He was a grand old man. And I’m here to say that old Judge Harris never had a son who would prostitute his profession here or anywhere else. Would you take their opinion against this son of Georgia who holds the highest position and the highest honor that it is possible to give him in the state?”

“Do you tell me that this man Hancock, surgeon for the Georgia Railway and Power company, a man that saws off bones and experiments with cabbage in diseased stomachs—do you tell me that Hancock, who hasn’t opened a medical book on this subject in ten years—do you tell me that his word in this case should stand for a moment against that of Dr. Harris?”

“And Dr. Clarence Johnson, stomach specialist, of undoubted and unimpeachable ability and truth—do you tell me that when he and Dr. Niles and Dr. Funke said that science could and they would venture an opinion as to whether or not Dr. Harris’ statements were true, they didn’t know whereof they spoke?”

WESTMORELAND PREJUDICED?

“They put up Dr. Westmoreland, gangrened with prejudice to such an extent that when I showed him an American Medical Journal, he said it was a journal of mountebanks; you tell me that this man, who tried to run the state board of health, who said that Dr. Harris was found guilty of scientific dishonesty, and whose word on that was disproved by the minutes of the board, did not show by his testimony attacking Dr. Harris that they do attach some importance to the state’s expert evidence?”

“‘I take acts, not words,’” said old Judge Lochrain.

“Briefly, let’s run over this nervousness proposition. This man indicated nervousness when he talked to Starnes over the telephone. He indicated nervousness when Black went out to see him. He sent his wife down tot eh door to give him nerve when he himself was almost dressed and she had nothing on but a bath robe.”

SENT NEWT LEE AWAY.

“But before I deal wit that, let me go back to where he warned Newt Lee to come back Saturday afternoon at 4 o’clock. Old Newt, dutiful darky that he was, walked in and Frank was washing his hands. Jim Conley hadn’t come yet and he sent Newt Lee out. Newt said that he wanted to sleep, that he wanted to lay down and take a nap, and he could have found a coxy corner about the factory. But Frank sent him away. He did it because he wanted an opportunity to burn that body, so that the police of this city would not have the mystery solved today and the public would never have known and the public would never have known that little girl lost her life in the factory.”

“Let’s consider his anxiety about Gantt, who said he wanted the shoes. He hung his head when he met Gantt, and when Gantt asked him about a pair of shoes he said, ‘I think I saw a boy sweeping them out.’ Doesn’t it seem like Providence that this long-legged mountaineer left two pairs of shoes there instead of one? Then it was that he dared not say, ‘I saw that boy sweep both pairs out.’ He couldn’t keep Gantt out and keep down suspicion, so he said ‘Go up with Newt Lee.’ And lo and behold, both pairs were there where he had left them.”

“Rogers and Black, who went out to Frank’s house that morning, tell you that he was nervous. He said he was nervous because he’d had no breakfast because he hadn’t had a cup of coffee. I tell you that he wanted his wife to go downstairs first because he wanted somebody to sustain him. When he telephoned for Darley to come to the pencil factory, he wanted somebody to sustain him. When he called for Attorney Rosser, he wanted somebody to sustain him. And he sent for Haas, because his conscience wanted somebody to sustain it.”

FRANK’S NERVOUSNESS.

“This man Darley—we went into the enemy’s camp to get ammunition! Fortunately, I got an affidavit and tied him up, and he couldn’t go back upon it here. I confronted him with the affidavit in which he had sworn ‘Frank was completely unstrung.’ You heard him change it here, and say that he was almost completely unstrung.”

“But he couldn’t go back on his whole statement. This man who called for coffee, called for it like Durant called for bromo-seltzer.”

“That automobile ride and the sight of the body made him nervous, just like Durant said the gas overcame him. You know, gentlemen, that but one thing could have made him nervous. That was the knowledge of his own guilt. Witnesses tell you that he squirmed and rubbed his face, and Darley himself says that when Frank rode to police station on his pay Frank trembled on his knee and shook like an aspen leaf.”

The usual morning recess interrupted Mr. Dorsey.

INSIDE DOOR LOCKED.

“Old Newt Lee says that when he went back Saturday afternoon, he found the inside door locked—a thing that had never happened before. He says that Frank came out of his office and met him, and that before then Frank always called him into the office to give him instructions when he reported for work. He says that when he went down into the basement he found that little gas jet, which had always burned brightly before, turned down so low that it looked like a lightning bug.”

“I tell you, gentlemen of the jury, it was turned down because when Frank went down there that afternoon to place the notes beside the body of the dead girl, he turned down the light in the hope that the body would not be discovered by Newt Lee.”

“Then Monday afternoon, when Scott was sent for. I believe that it would not require an affidavit to hold Scott to the truth, but after my experience with Darley I trembled in my shoes for fear that Scott when he went on the stand would throw me down like Darley had tried to do. But Scott didn’t. He was an honest man. Although their

own detective, he says that Frank in the office that Monday afternoon squirmed and fidgeted in his chair, crossed his legs and recrossed them, rubbed his face with his hands, and uttered long sighs. Scott testified that going to the station Tuesday morning Frank was nervous and pale. He testified that before going to the station that morning, while he was in the factory, his eyes were large and excited."

"Waggoner, the man who was placed across the street to watch Frank Tuesday morning, saw him pacing back the forth on the floor of his office, and saw him come to the window and look out at least a dozen times in 30 minutes."

QUOTES FROM SPEECH.

"Right here I want to read you an extract from a speech by a man named Hammond, in prosecuting a man named Dunbar, for the murder of two children. He expressed it better than I do: 'It was because there was a mighty secret in his breast. It was because on overwhelming consciousness of guilt was striving within him. It was because nature was overburdened with a terrible woe. It was because his conscience was rising beneath a stupendous and crushing weight. It was because of the fear and the remorse and crushing weight. It was because of the fear and the remorse and the terror in his soul. It was because spectral shadows were flitting before him.'"

"The spectral shadow Frank was seeing were the specters of the dead girl, of the cord, of the blood, of this trial, of the gallows, and the specter of an infamous grave.

Guilt forces itself into the speeches and conduct and its own betrayer."

"Now let us discuss Conley. Although leaving him out of this case you still have a course of conduct that shows this defendant to be guilty. But before discussing Conley, let's look at some of the others brought into the case by Conley."

"Is Dalton such a lowdown character as he was pictured to you by the able counsel for the defense? Granting that he is, wouldn't that be just the sort of character you would expect to find consorting with Frank in his unspeakably immoral practices."

"If, as Attorney Arnold says, you should not damn Frank because he occasionally went around the ladies, then why should you damned Dalton for the same thing? They took him before he came to Atlanta, and by the testimony of men of whom we know nothing impeached his testimony. We took him after he came to Atlanta, and by the testimony of men who are known in this community we sustained his testimony. Not only did we sustain him by more witnesses than they brought here to impeach him but we proved by the testimony of a witness who is unimpeached and unimpeachable that he saw Dalton going into the factory with a woman last summer."

CONLEY CORROBORATED.

"Corroboration of Conley? Of course, it is corroboration! The very fact that these lawyers who are defending this man failed to attempt to sustain Daley Hopkins is another corroboration of Conley."

At this point the solicitor took up the response filled with the court by William M. Smith, the attorney for James Conley, in answer to the rule of Judge Roan requiring him to show cause why Conley should be transferred as a prisoner to the county jail. Among the reasons stated in that document were the following: that the respondent, Jim Conley, admitted that his presence at the trial should be assured: that as a prisoner at police station the respondent would be safe from any attack, being confined in a solitary cell and no one being allowed to see him except his attorneys and those whom he desired to see."

"If it was right for Frank, in jail, not to see anyone except his lawyer and those whom he desired to see," said the solicitor, "why was it not right for James Conley at police sta-

(Continued on page 5, column 1.)

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ARNOLD'S MOTION FOR MISTRIAL IS DENIED BY JUDGE ROAN

(Continued From Page 4.)

Tion to be given the same treatment?"

GROUNDS FOR PETITION.

The solicitor continued reading the grounds of the petition: That neither the respondent nor his counsel requested the transfer; that the respondent believed the transfer to have been planned by persons unfriendly to him and friendly to Frank; that owing to the inadequate inside force of guards to the jail, it was impossible for the sheriff

to know what was occurring within; that the prisoners' food was distributed by trusties, which admitted of the possibility of the respondent being poisoned; that friends of Frank were allowed to pour constantly into the jail, even until far into the night, and that these friends of Frank were on good terms with the trustees; that during the respondent's short time in the jail, a goodly number of persons were admitted to see him without his request and against his wishes; that by one of three persons, who the respondent believed to have been in the employ of Frank, the respondent was offered a sandwich and some whisky; that respondent's life even was threatened; that the respondent believed that if he was kept a prisoner at the jail, some party or parties friendly to Frank, being admitted to see him against his wishes, might afterward swear that he had made certain admissions which he did not make; that while a prisoner in the jail he was lodged among the most desperate criminals confined there, who could and might, in order to benefit themselves, wear that the respondent made a confession which he did not make, that the sheriff had publicly proclaimed that the defendant, Frank, looked him in the eye like an innocent man, and that the sheriff had isolated Frank in a whole block of cells to himself where he was protected from everyone whom he did not wish to see."

"There no reflection on the sheriff, but with the friends of Frank pouring into the jail and offering him whisky and threatening him, there was good reason why his honor sent him back to the custody of the honorable men who control the police force."

ROSSER OBJECTS.

Attorney Rosser objected, saying that the judge merely had revoked his order.

“You’re right! I’m glad you’re right one time!”

“That’s more than you’ve ever been,” retorted Mr. Rosser.

Mr. Rosser objected again, and Judge Roan explained his order. He said that on motion of the state’s counsel and counsel for Conley, he rescinded both of his former orders, leaving Conley without any order against him.

Mr. Dorsey continued: “First he was in the common jail. Then he was sent to police station by order of his honor, Judge L. S. Roan. That the orders were rescind, and except for the determination of the police of the city of Atlanta he would have been at liberty when he went upon the stand here or he would have been spirited out of town by those who wished to prevent his damaging testimony being placed before you.”

CONLEY NOT IMPEACHED.

“You say that Conley has been impeached? I say that he has not been impeached except by those with their hands in the till of the National Pencil factory. His general character is unimpeached, except by the words of the hirelings of the National Pencil factory. Yet you would say that he committed this crime, when all you have been able to bring up against him—despite the fact that they have interviewed all of his former employers—is that he had been locked up in police station on the charge of disorderly conduct. Is Conley sustained? Yes, abundantly.”

“Our proof of the general bad character of Frank entertains Jim Conley. Our proof as to the conduct of Frank sustains Jim Conley. Your failure to examine these hair-brained fanatics, as Arnold calls them without rhyme or reason, sustains Jim Conley. His relations with Miss Rebecca Carson, who is shown to have gone to the dressing room with him, sustains Jim Conley.”

“Your own witness, Miss Jackson, says that this libertine and rake went into the dressing room and stood with a sardonic grin—she sustains Jim Conley. Miss Kitchens, who worked on the fourth floor, and whom you did not produce, by her statement of how he went into the dressing room, sustains Jim Conley. Darley and Miss Mattie Smith, as to what they did April 26, sustain Jim Conley. Trueman McCrary, the negro whom you praise and who gets his living from the pencil factory, sustains Jim Conley as to where he put those sacks.”

“Monteen Stover, who went in just at the minute that Frank was back in the metal room with this poor, unfortunate girl, sustains Jim Conley by the statement of the kind of shoes she wore. Monteen Stover, when she says that nobody was in the office, sustains Jim Conley as to his statement that he heard the footsteps of two people going back.”

“Lemmie Quinn, your own dear Lemmie, when his statement is taken with the evidence of Miss Hall and Mrs. Freeman, sustains Jim Conley. Dalton, whose character for the past ten years we have sustained, sustains Jim Conley about previous Saturdays.”

“Daisy Hopkins, by her awful reputation, sustains Jim Conley. The blood or the second floor sustains Jim Conley. The testimony of Holloway, as given in the affidavit to me; and Boots Rogers’ statement that the elevator box was unlocked, both sustains Jim Conley, Ivy Jones, whom he met near the factory, sustains Jim Conley. Albert McKnight, who testified as to the time Frank reached home and the time he left, sustains Jim Conley.”

“The repudiated affidavit of Minola McKnight, whose attorney let her sign it when he knew he could get her out on a habeas corpus, sustains Jim Conley. The noose in that cord sustains Jim Conley. The existence of the notes, alone, sustains Jim Conley because no negro in the history of the race ever wrote a note to cover a crime. The character of words used is the notes, sustains Jim Conley.”

ROSSER CLASHES WITH DORSEY.

Mr. Rosser objected, saying that repeatedly and continually in his statement Jim Conley had used the word “did.” The record was called for “I want to see who took the record,” said Mr. Dorsey. “It doesn’t matter,” said Mr. Rosser. “If God Himself had reported it, you wouldn’t have believed it. Your mind is gangrened.” Mr. Rosser asserted that Jim Conley used the word “did” a hundred times. Mr. Dorsey disputed that he never did use it. The defense read several instances. Mr. Dorsey said, “Call for the reporter,” saying that he wanted to see his physiognomy. Judge Harvey Parry, who had reported part of the Conley statement, sustained the defense, and in reply to Dorsey said that shorthand characters for did and done were not at all alike, Mr. Dorsey continued.

“Leave the language out of it,” he said. “Take up the context. The note said she was assaulted when she went back for a natural purpose. And the only toilet Mary knew was in the metal room on the second floor. The fact that the note said the negro ‘did … by his-self’ showed a conscious effort to limit the crime.”

“Frank by his own statement sustains Jim Conley as to the time of his arrival at the office, the time of his visit to the Montags, and as to the fact that he carried a folder in his hand.”

“Arthur White, according to his statement, borrowed $2 in the afternoon. Where is the entry to show that Frank put down that loan? The fact that there is no entry sustains Jim Conley in his description that Frank’s mind was burdened with the problem of disposing of the body.”

WHAT ABOT MINCEY?

“Frank said, ‘We found it better to get a voucher book and let everybody sign for what money they got. Notwithstanding that, they failed or refused to produce a record showing that White ever got that money. I’ll tell you the reason why he didn’t enter it. It was because his mind and conscience were on the crime he had just committed. You tell me that this expert bookkeeper, this Cornell graduate, would have overlooked that. There is only one reason why he did. Conley is sustained by Frank why Conley says he remarked that he had relatives in Brooklyn. When old Jim was on the standing Mr. Rosser him about Mincey. Is Mincey a myth, or is he such a diabolical perjurer that it would nauseate the stomach of you gentlemen to produce him before you?”

Turning to Mr. Arnold and Mr. Rosser: “If you weren’t going to produce Mincey, why did you parade him before the jury?”

“Gentlemen, the absence of Mincey corroborates Jim Conley.”

“Gentlemen, every set of that defendant proclaims him guilty.”

“Every word proclaims his knowledge of the death of little Mary Phagan.”

“Every circumstance proven him responsible for the murder of that little girl.”

“Remarkable? Yes, but true! She died a noble death without a stain on her name. She wouldn’t yield her virtue her superintendent. And he strangled her and killed her.”

“In the language of Daniel Webster ‘when a jury, through whimsical and unfounded scruples, fails to do its full duty, it violates its oath.’”

Turning to the judge, Solicitor Dorsey said: “Your honor. I have done my duty. I have no apology to make. So far as the state is concerned, you now can charge this jury —this jury sworn to be without prejudice or bias, this jury sworn to try well and truly Leo M. Frank. I beg that under the law you give them your opinion of the evidence. There can be but one verdict—‘We, the jury, find this defendant guilty.’ Guilty! Guilty.”

Solicitor Dorsey concluded his speech at 12 o’clock.

The jury, at the request of Attorney Arnold, was taken from the court room. And Attorney Arnold then laid before

the court a motion for a mistrial. He had it written in pencil, and read from it.

“I have a motion to make for a mistrial, and I wish to name the facts on which we make it. We wish to prove every fact included in this motion, unless the court already knows it. We base our motion on the following facts:”

“First, at the beginning of this trial counsel for the defendant requested that the court room be cleared.”

“Second, when the court refused to rule out evidence relating to women, the audience applauded loudly. The jury was in the court room twenty feet away and heard the applause.”

“Third, on Friday, August 22, when court had just adjourned for the day, when the jury was 200 feet north of the court house on South Pryor street, a large crowd cheered the solicitor, crying, ‘Hurrah for Dorsey.’”

“Fourth on Saturday, August 23, 1913, when the jury was only 100 feet away from the court house, in the German café, a crowd in front of the court house loudly cheered the solicitor as he came out, and afterward a portion of the crowd moved up in front of the café and repeated their cheers.”

“Fifth, that on the last day of the trial, namely Monday, a large crowd of women had assembled in the court room and taken their seats before court opened; that as Mr. Dorsey entered the court house he was loudly cheered; and that the jury in rooms not more than twenty feet away must have heard the demonstrations plainly.”

“Sixth, that these demonstrations tended to coerce and intimidate the jury and influence their verdict in the case.”

Attorney Arnold continued:

NOT A FAIR TRIAL.

“Your honor, in the event you do not take cognizance of these facts yourself and certify to them, we stand ready to prove them all. The behavior of the spectators throughout this trial has been disgraceful. This man has had anything in the world but a fair trial. I’m not afraid of this crowd, and I hope no one else is, but their demonstrations tend to intimidate the jury.”

IN reply to Mr. Arnold’s argument, the solicitor said:

“First, your honor, we deny there were any shouts of ‘Hurrah for Dorsey!’ And second, we counted that it is ridiculous to claim they amounted to anything even if they were. You have the right to charge the jury that if they heard any of these cheers, to pay no attention to them, just as you charged the jury to pay no attention for that newspaper headline which you inadvertently allowed them to see.”

Attorney Arnold pressed the judge for a statement as to what he would certify to.

Judge Roan: “Of course I heard the cheers this morning, and the cheers Saturday afternoon. But I do not know what was said.”

Turning to the solicitor, Attorney Arnold asked:

“Do you deny that there were cheers of ‘Hurrah for Dorsey’?”

Solicitor Dorsey: “I heard the noise, but I heard no such cheers as that.”

Attorney Arnold: “We want an opportunity, your honor, to prove these facts unless you are willing to certify them yourself.”

Judge Roan: “Whether the jury was influenced this morning. I don’t know. What was said Saturday, I don’t know. As to the jury being in the German café Saturday afternoon, and as to a portion of the crowd moving up in front of the café and continuing the demonstrations, I don’t know.”

Attorney Arnold: “Then we have to prove our facts. Where are these men that had charge of the jury? I understand the solicitor demurs to this action.”

DORSEY DENIES AND DEMURS.

Judge Roan: “No, I don’t understand that he demurs.”

Solicitor Dorsey: “Your honor I deny and demur, too.”

Attorney Arnold then called as a witness Deputy Sheriff R. V. Davers. The Jury was not in court. He was sworn and testified in substance that he was not in charge of the jury on Friday, but was one of the men in charge on Saturday; that the jury was near the German café when the applause began and that he heard the applause; that he did not hear cries of “Hurrah for Dorsey;” that the jury could have heard the applause and cheers; that after they went inside the café he did not hear any more cheers or applause.

On cross-examination by Attorney Hooper, he testified that the crowd was in front of the court house: that he could not hear the words they said, but only the noises and the handclaps; that no one came inside of the café after the jury entered; that he heard nothing on the outside after they went in; and that he does not know whether Dorsey was in the court house or outside of the court house when cheering commenced.

Attorney Arnold called for the bailiffs who were in charge of the jury on Friday, but none of them was in the court room at that moment, so he swore himself.

ARNOLD TESTIFIES.

Mr. Arnold testified that as Mr. Dorsey left the court room Friday afternoon he heard loud cheering in front of the court house; that on Saturday he asked the solicitor not to leave the court room until the jury had gotten out of hearing, to which the solicitor readily agreed; that after they had waited several minutes, they thought the jury was out of hearing, and the solicitor left the court room with him, Mr. Arnold, walking immediately behind him; that as the solicitor stepped into the street there were loud and excited cheers and cries “Hurrah for Dorsey;” that in his judgement, these cries could have been heard as far as Alabama street.

On cross-examination by Attorney Hooper. Mr. Arnold testified that he did not know where the jury was at the time, except by information, that he did not hear this trial mentioned by the crowd; and that he did not hear the crowd mention Frank’s name.

“At any other time,” remarked Mr. Arnold, “I would be glad for my friend Dorsey to get all the approbation he can. But on this occasion I think the conduct of the crowd was shameful. In my judgement, if the jury is composed of men of ordinary hearing, they could have heard what I heard.”

When Attorney Arnold finished, a deputy sheriff, Charles F. Huber, who was one of those in charge of the jury on Friday, had come into court, and was put up and sworn.

In answer to Attorney Arnold’s first questions, he replied that he did not know of the cheers on Friday until Saturday morning.

CROWD TITTER.

When Mr. Huber said this, a titter ran around the court room.

Attorney Arnold whirled and faced the crowd.

“Why, your honor!” he exclaimed, “you can’t even keep them quiet now, here in the court room. I wish to state in the record, Mr. Stenographer, that support of the motion, quite a demonstration took place in the court room unfavorable to the defendant. Will your honor certify to that?”

“I will certify to what happened,” replied Judge Roan.

When asked who else had charge of the jury on Friday. Mr. Huber named among others Deputy Sheriff Drew Liddell.

“Then,” said Attorney Arnold, “I want Mr. Liddell called in. He’s not afraid to tell what he knows, although I don’t say this gentleman is.”

Glaring angrily at Mr. Arnold, Deputy Huber left the stand.

Attorney Arnold: “Will you decline to certify your honor that I asked you before the trial commenced to clear the court room?”

Judge Roan: “No. I won’t decline to do that.”

Attorney Arnold: “We want an opportunity, your honor, to complete our showing on this motion. Mr. Liddell and some of the other deputies are not here.”

JUDGE OVERRULES MOTION.

Judge Roan repelled that he would overrule the motion for a mistrial, charge the jury, and then give the attorneys for the defense an opportunity to summon other witnesses and complete what showing they desired to make on the motion.

The jury then was recalled, and Juge Roan commenced his charge.

During the reading of the charge, it appeared as if Mrs. Leo M. Frank was on the verge of fainting. She became very pallid, and at one time leaned her head back in her chair, closed her eyes, and clasped her throat. Mrs. Rae Frank, impassive, reached over and patter on the back and she was given a glass of water and several friends of the family fanned her. She revived, but rested her head on her husband’s shoulder. For a quarter of an hour during the reading of the charge, Frank’s arm was around her and his

head rested on hers. Frank betrayed no more emotion than at all other times during the trial.

The jury was very attentive to the charge. There was a slight hubbub in court when Judge Roan finished his charge.

The judge finished at 12:47.

The jury was taken out of court, and across the street to the café for lunch, it was stated that immediately after lunch they would be returned to the court house and that on the fourth floor they would complete their deliberations.

Many of the crowd remained in their seats when court adjourned and the doors were opened.

One woman declared her intention of remaining all afternoon in the hope that the jury would return a verdict.

CONFERENCE HELD.

Immediately after the jury was taken from the room Judge Roan. Attorney Rosser and Arnold and Solicitor Dorsey held a consultation in an anteroom. It lasted only two or three minutes. Attorneys and the judges refused to give out what they discussed. All say it was an important conference, however.

After the jury had gone to lunch counsel discussed with the court the matter of submitting three papers to the jury. One was the Holloway affidavit, given to the solicitor; the other was the Minola McKnight affidavit, made at the police station and the third was the statement made by Frank to the detectives.

After some discussion, Mr. Dorsey admitted that the first two affidavits had not been properly tendered, and so they will not go to the jury. In the matter of Frank's statement, it was decided to consult the records further and no action was taken on this.

Thirty minutes after the case had gone to the jury, Solicitor Dorsey crossed Pryor street to his office, and on the way over was vigorously cheered by the people who had waited in front of the court house.

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Atlanta Cop Is Shot

Looking Through Window

Officer C. F. Preston, of the police department, was wounded in the thigh by a bullet fired by R. E. Maner, of Gilmore Station, one night last week, when the policeman looked through a window at 42 Kennedy street, where Maner was calling on a young lady.

In company with another officer, Preston went by appointment to the corner of Kennedy and Lambert streets to meet Claud Leatherwood, of 44 Kennedy. The latter charged that a couple, whom he did not know, had conducted themselves in an improper manner several times in full view of his family and that he wanted the officers to see for themselves what was going on."

While the officers were in the yard of 44 Kennedy, Cochran, who had gone to the rear, heard a shot and ran forward to meet Preston, who said that he had been wounded by a shot fired from a side window of 42 Kennedy as he passed.

Maner was put under arrest at once and a revolver taken away from him. He denied any improper conduct on the part of himself and the girl, and states that he fired because he had noticed men looking in at the window on former occasions when he was calling at the house.

The wound received by the officer proved harmless.